IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.8.2006

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

Writ Petition No.22487 OF 2006

P.Soundararajan .. Petitioner

vs.

1. The Senior Project Manager
   Sipcot Industrial Complex
   Gummidipoondi
   Thiruvallur District

2. The Chairman and Managing Director
   Sipcot Limited
   19-A, Rukmani Lakshmipathy Road
   Egmore, Chennai - 600 008 .. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the second respondent to release the subsistence allowance to the petitioner.

For petitioner : Mr.M.Vembadiyan
For respondents : Mr.M.Devaraj

O R D E R

This writ petition has been filed for a direction against the second respondent to release the subsistence allowance due to the petitioner. The petitioner was appointed as Assistant Engineer in the respondents office in 1991 and then he was promoted as Assistant Executive Engineer and working in the said capacity in the first respondent office. In respect of economic offence, he was arrested on 29.4.2005 and a criminal case is pending. In the meantime, the second respondent has passed the order of suspension on 2.5.2005 against the petitioner on the basis that a criminal offence against the petitioner in Crime No.5 of 2005 under Section 5 of the Tamil Nadu Protection of Interest of Deposit Act is under investigation.

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2. It is an admitted case that for a period of six months from the date of receipt of the suspension order, the petitioner was paid 50% of the salary as subsistence allowance as per the rules.

3. Learned counsel for the petitioner would submit that afterwards for the months of November and December 2005, the petitioner was paid 25% of his salary as subsistence allowance and thereafter from January 2006 onwards till date admittedly no subsistence allowance has been paid.

4. The reason given by the respondents in the counter-affidavit is that as per the service rules applicable to the petitioner's service, after first six months period of suspension, if the reason for not completing the enquiry is attributable to the delinquent for the reason arrived at by the management, the subsistence allowance can be reduced to 25% or it may be increased. In this case, when admittedly for the months of November and December 2005, the subsistence allowance was reduced to 25% there is no order passed specifying any reason. It is relevant to point out that under the Rule, the authority has to decide whether to reduce or to increase the subsistence allowance for a proper reason. In the absence of proper reason, one has to necessary come to the conclusion that the petitioner is entitled for the subsistence allowance as per the regulations. It is not even the case of the respondents that the petitioner has not co-operated with the disciplinary proceedings, for admittedly no charges were framed so far. Therefore, the question of non co-operating with the respondents in the disciplinary proceedings does not arise. It cannot be stated that the petitioner being an accused in a criminal case has not co-operated in the criminal case, which is pending against him. It is relevant to point out that the subsistence allowance is a basic right of an employee for sustinance and that cannot be denied till final orders are passed in the disciplinary proceedings.

5. In view of the same, I have no hesitation to come to the conclusion that the petitioner is entitled for the subsistence allowance as per the rules governed in the service condition of the petitioner. In the present case, the petitioner had been paid 50% of the salary upto October 2005, namely, first six months period and from November onwards till date the petitioner is entitled for enhanced payment of subsistence allowance at the rate of 75%. The respondents are directed to pay the subsistence allowance at the said rate to the petitioner and arrears till date shall be paid within a period of two weeks from the date of receipt of a copy of this order and subsequent subsistence allowance also continue to be paid till the disciplinary proceedings initiated against the petitioner are completed.

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The writ petition is ordered accordingly. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Senior Project Manager
   Sipcot Industrial Complex
   Gummidipoondi
   Thiruvallur District

2. The Chairman and Managing Director
   Sipcot Limited
   19-A, Rukmani Lakshmipathy Road
   Egmore, Chennai - 600 008

2 cc To Mr.M.Vembadiyan, Advocate, SR.35492.
1 cc To Mr.M.Devaraj, Advocate, SR.35634.

W.P.No.22487 OF 2006

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RVL 19.08.2006

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